

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

This Document Relates To:

Burst.com, Inc. v. Microsoft Corp.,
1:02 cv02952

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: MDL DOCKET NO. 1332
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: Hon. J. Frederick Motz
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**MICROSOFT CORPORATION'S MOTION FOR EXTENSION OF TIME
TO SERVE ITS RESPONSE TO BURST.COM'S MOTION
TO COMPEL PRODUCTION OF CERTAIN DOCUMENTS
FROM THE EUROPEAN UNION'S ANTITRUST PROCEEDING**

Microsoft Corporation, by and through its attorneys, respectfully moves this Court for an extension of time in which to serve its brief in response to Burst.com's Motion to Compel Microsoft to Produce Documents Concerning the Windows Media Player Portion of the European Union's Antitrust Proceeding. In support thereof, Microsoft states as follows:

1. In mid-September, 2003, Burst served on Microsoft its Fifth Separate Request for Production of Documents. Request Number 1 sought, *inter alia*, production of certain documents from the European Union's antitrust investigation of Microsoft concerning streaming or media delivery software and integration of Microsoft's Windows Media Player product with the Windows operating system (hereinafter "EU Materials"). The investigation is being conducted by the European Commission ("EC").

2. On October 21, 2003, Microsoft served on Burst its Responses and Objections to its Fifth Separate Request for Production ("Objections"). In its Objections, Microsoft objected to Production of the EU Materials on a number of grounds. Among other objections, Microsoft explained that it is not at liberty to provide information relating to the European Commission's investigation, including but not limited to the Commission's Statements of Objections, factual or legal findings or decisions, and work performed or done by Commission staff, except to the extent those are publicly available. Microsoft further explained that the European Commission considers those documents to be confidential and in the past has instructed Microsoft not to provide the information to third parties. Information in the Commission file to which Microsoft has been given access, including Statements of Objection, information from third parties and other material, has been provided to it solely for use by Microsoft in defending against objections raised by the Commission in a Statement of Objections (which is in substance a complaint, not a finding after a proceeding).

3. On October 23, 2003, Burst served Microsoft with a Motion to Compel production of the EU Materials. Pursuant to Local Rule 104.8a, Microsoft's responsive brief would have been due on November 6, 2003. Burst agreed to allow Microsoft until November 11, 2003 to serve its response.

4. Developing a full and accurate response to Burst's Motion requires the attention and involvement of Stuart Meikeljohn and Steve Holley of Sullivan & Cromwell, Microsoft's outside law firm handling the European Commission matter. They are the individuals in communication with the European Commission and with knowledge about the European Commission's practices relating to the disclosure of EU Materials.

5. At the present time, however, Messrs. Meikeljohn and Holley are in Brussels preparing for a multi day hearing before the European Commission that is

scheduled to begin on Wednesday, November 12, 2003. As a result, they have been unable to devote the attention necessary for Microsoft to develop a complete and accurate response to Burst's Motion.

6. Burst's counsel has not agreed to give Microsoft an extension of time beyond November 11, 2003.

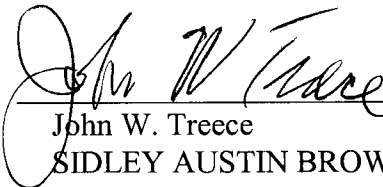
7. Through no fault of its own, Microsoft will be unfairly prejudiced if it is required to serve its response to Burst's motion prior to obtaining the critical involvement of its key outside counsel familiar with the European Commission's practices.

WHEREFORE, Microsoft respectfully requests that it be granted a 2-week extension of time in which to serve on Burst its responsive brief relating to Burst's motion to compel certain EU Materials, extending until November 25, 2003 the date by which its response will be due.

Dated: November 11, 2003

MICROSOFT CORPORATION

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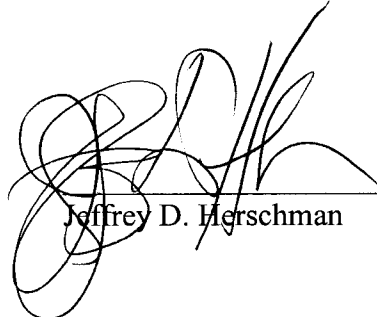
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CERTIFICATE OF SERVICE

Jeffrey D. Herschman, an attorney, hereby certify that on November 11, 2003, he caused a true and correct copy of the foregoing document, Microsoft's Motion for Extension of Time to Serve its Response to Burst.com's Motion to Compel Production of Certain Documents From The European Union's Antitrust Proceeding, to be served upon the following counsel for the Plaintiff by overnight courier and facsimile:

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